



IN THE SUPREME COURT OF THE STATE OF NEVADA

**FILED**

INDICATE FULL CAPTION:

**ORIGINAL**

**JUN 14 2007**

MICHAEL TODD BOTELHO  
Appellant,

vs.

THE STATE OF NEVADA,  
Respondent.

No.

49586

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

**DOCKETING STATEMENT  
CRIMINAL APPEALS**

(Including appeals from pretrial and post-conviction rulings and other requests for post-conviction relief)

**GENERAL INFORMATION**

1. Judicial District Second County Washoe  
Judge Jerome Polaha District Ct Case No. CR03P-2156

2. If the defendant was given a sentence,

(a) what is the sentence? Forty-Five (45) years to the parole board.

Kidnapping in the First Degree: Life with the Possibility of Parole after a minimum of five (5) years has been served.

Sexual Assault on a Child: Life with the Possibility of Parole after a minimum of twenty (20) years has been served. Consecutive To Ct. I.

(b) has the sentence been stayed pending appeal?

No

(c) was defendant admitted to bail pending appeal?

No

3. Was counsel in the district court appointed ☒ or retained ☐ ?

4. Attorney filing this docketing statement:

Attorney Mary Lou Wilson Telephone 775-337-0200  
Firm: Law Office of Mary Lou Wilson  
Address: 333 Marsh Ave  
Reno, Nevada 89509

Client(s) Michael Todd Botelho

5. Is appellate counsel appointed ☒ or retained ☐ ?

Sexual Assault on a Child: Life with the Possibility of Parole after a minimum of twenty (20) years has been served. Concurrent to Count II.

Sexual Assault on a Child: Life with the Possibility of Parole after a minimum of twenty (20) years has been served. Consecutive to Count III.

**RECEIVED**

**JUN 14 2007**

CLERK OF SUPREME COURT  
By DEPUTY CLERK

07-13041

If this is a joint statement by multiple appellants, add the names and addresses of other counsel on an additional sheet accompanied by a certification that they concur in the filing of this statement.

6. Attorney(s) representing respondent(s):

Attorney Gary H. Hatlestad Telephone 775-337-5751  
Firm: Chief Appellate Deputy  
Address: Washoe County District Attorney  
Post Office Box 30083  
Reno, Nevada 89520  
Client(s) The State of Nevada

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_  
Firm: \_\_\_\_\_  
Address: \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

7. Nature of disposition below:

- |  |   |
|--|---|
| <input type="checkbox"/> Judgment after bench trial            | <input type="checkbox"/> Grant of pretrial habeas                         |
| <input type="checkbox"/> Judgment after jury verdict           | <input type="checkbox"/> Grant of motion to suppress evidence             |
| <input type="checkbox"/> Judgment upon guilty plea             | <input checked="" type="checkbox"/> Post-conviction habeas (NRS ch. 34)   |
| <input type="checkbox"/> Grant of pretrial motion to dismiss   | <input type="checkbox"/> grant <input checked="" type="checkbox"/> denial |
| <input type="checkbox"/> Parole/Probation revocation           | <input type="checkbox"/> Other disposition (specify)                      |
| <input type="checkbox"/> Motion for new trial                  |   |
| <input type="checkbox"/> grant <input type="checkbox"/> denial |   |
| <input type="checkbox"/> Motion to withdraw guilty plea        |   |
| <input type="checkbox"/> grant <input type="checkbox"/> denial |   |

**8. Does this appeal raise issues concerning any of the following:**

☐ death sentence  
☒ life sentence

☐ juvenile offender  
☐ pretrial proceedings

**9. Expedited appeals:** The court may decide to expedite the appellate process in this matter. Are you in favor of proceeding in such manner?

Yes ☒ No ☐

**10. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal (e.g, separate appeals by co-defendants, appeal after post-conviction proceedings):

Michael Todd Botelho vs. The State of Nevada, No. 43247  
filed April 4, 2005

**11. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts that are related to this appeal (e.g., habeas corpus proceedings in state or federal court, bifurcated proceedings against co-defendants):

Petition for Writ of Habeas Corpus (Post Conviction)  
CR03P-2156

**12. Nature of action.** Briefly describe the nature of the action and the result below:

Appellant filed an original petition for writ of habeas corpus (post conviction). Counsel was appointed and the district court permitted an evidentiary hearing. During the hearing, Dr. Martha Mahaffey testified consistent with her psychosexual report that Appellant was a medium/high risk to reoffend, which was not presented during the sentencing phase of the litigation. The district court did not believe that the psychosexual report made a difference in the sentence given to Appellant and opined that trial counsel was not ineffective for not providing a psychosexual report.

13. **Issues on appeal.** State concisely the principal issue(s) in this appeal:

Whether the district court abused its discretion when denying the petition finding that trial counsel was not ineffective when failing to provide a psychosexual report for sentencing consideration when Appellant was a medium/high risk to reoffend?

14. **Constitutional issues.** If the State is not a party and if this appeal challenges the constitutionality of a statute or municipal ordinance, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A ☒ Yes ☐ No ☐

If not, explain

15. **Issues of first-impression or of public interest.** Does this appeal present a substantial legal issue of first-impression in this jurisdiction or one affecting an important public interest?

First-impression: Yes ☐ No ☒

Public interest: Yes ☐ No ☒

16. **Length of trial.** If this action proceeded to trial or evidentiary hearing in the district court, how many days did the trial or evidentiary hearing last?

N/A days

17. **Oral argument.** Would you object to submission of this appeal for disposition without oral argument?

Yes ☐ No ☒

#### TIMELINESS OF NOTICE OF APPEAL

18. Date district court announced decision, sentence or order appealed from 5-25-07

19. Date of entry of written judgment or order appeal from 5-25-07

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

20. If this appeal is from an order granting or denying a petition for a writ of habeas corpus, indicate the date written notice of entry of judgment or order was served by the district court

(a) Was service by delivery ☐ or by mail ☒.

21. If the time for filing the notice of appeal was tolled by a post judgment motion,

(a) Specify the type of motion, and the date of filing of the motion:

Arrest judgment _____	Date filed _____
New trial _____	Date filed _____
(newly discovered evidence)	
New trial _____	Date filed _____
(other grounds)	

(b) Date of entry of written order resolving motion \_\_\_\_\_

22. Date notice of appeal filed Filed Certified Copy of Notice of Appeal 6-7-07

23. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(b), NRS 34.560, NRS 34.575, NRS 177.015(2), or other

### SUBSTANTIVE APPEALABILITY

24. Specify statute, rule or other authority that grants this court jurisdiction to review from:

NRS 177.015(1)(b) _____	NRS 34.560 _____
NRS 177.015(1)(c) _____	NRS 34.575(1) <u>X</u>
NRS 177.015(2) _____	NRS 34.575(2) _____
NRS 177.015(3) _____	Other (specify) _____
NRS 177.055 _____	

### VERIFICATION

I certify that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief.

Michael Todd Botelho

Name of appellant

Mary Lou Wilson

Name of counsel of record

June 12, 2007

Date

Mary Lou Wilson

Signature of counsel of record

### CERTIFICATE OF SERVICE

I certify that on the 13 day of June 2007, I served a copy of this completed docketing statement upon all counsel of record:

☐ by personally serving it upon him/her; or

☒ by mailing it by first class mail with sufficient postage prepaid to the following address(es): The Honorable Judge Jerome Polaha, Second Judicial District Court,  
Post Office Box 30083 Reno, Nevada 89520

Dated this 13 day of June, 2007.

Chief Appellate Deputy District Attorney Gary H. Hatlestad, Washoe County District Attorney, Post Office Box 30083, Reno, Nevada 89520

Attorney General, Post Office Box 100 North Carson Street, Carson City, Nv. 89701-4717

Janette Bloom, Clerk of the Nevada Supreme Court, 201 South Carson Street Carson City, Nevada 89701

Michael Todd Botelho, Inmate Number 80837, Nevada State Prison, Post Office Box 607, Carson City, Nevada 89702